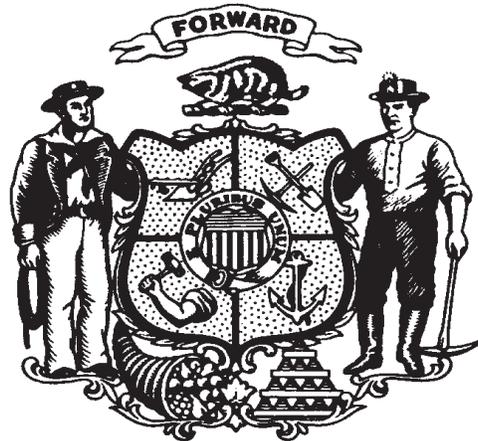


Wisconsin Administrative Register

No. 590



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Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Commerce

(Financial Assistance for Businesses & Communities, Chs. Comm 105—)

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of a rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much-needed risk capital and federal research dollars to Wisconsin.

Publication Date:	December 2, 2004
Effective Date:	December 2, 2004
Expiration Date:	May 1, 2005
Hearing Date:	January 12, 2005

Elections Board

Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under

circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date: February 3, 2005
Effective Date: February 3, 2005
Expiration Date: July 3, 2005

Insurance

Rules were adopted creating **ch. Ins 14**, Wis. Adm. Code, relating to vehicle protection plans.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The statute requiring these changes is effective on December 1, 2004. The length of the rulemaking process has not permitted OCI to finish promulgating the rule. This emergency implementation will allow vehicle protection businesses to start getting registered and selling their products. Many of these products are promoted as safety related such as glass etching, the "club," vehicle entry warning sirens and others. Consumer would then be able obtain the promoted safety benefits of these products as soon as the legislature permitted them.

Publication Date: December 10, 2004
Effective Date: December 10, 2004
Expiration Date: May 9, 2005

Natural Resources (3) (Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising **chs. NR 10 and 19**, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non-hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004
Hearing Date: August 25 and 26, 2004
Extension Through: March 6, 2005

2. Rules adopted creating **ss. NR 1.05, 1.06 and 1.07**, relating to Natural Resources Board policies on protection and management of public waters.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).
- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

3. Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate

preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearkers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. The spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

Publication Date: February 2, 2005
Effective Date: February 2, 2005
Expiration Date: July 2, 2005
Hearing Date: February 23, 2005

natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

Natural Resources (7)

(Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 320**, relating to the regulation of bridges and culverts in or over navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of

2. Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to

establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

- Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

- Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

5. Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

6. Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin

Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

7. Rules adopted creating **ch. NR 310**, relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or

under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

Public Instruction (2)

1. Rules were adopted revising **ch. PI 35**, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Per 2003 Wisconsin Act 15, the provisions under the rule must take effect beginning in the 2004–05 school year. Because some of the reporting requirements must be made by August 1, the rule must be in place as soon as possible to give the private schools enough notice to meet such requirements.

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004
Hearing Date: September 13, 2004
Extension Through: March 26, 2005

2. Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the

payment of state aid under the student achievement guarantee in education (SAGE) program.

Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.43 (6m), Stats., requires the department to promulgate rules to implement and administer the payment of state aid under s. 118.43 (6), Stats. Because the next deadline for pupil reporting requirements occurs in January 2005, the rule must take effect as soon as possible to give eligible schools enough notice to meet such requirements.

Publication Date: December 20, 2004
Effective Date: December 20, 2004
Expiration Date: May 19, 2005

Regulation and Licensing (2)

1. Rules were adopted repealing **ss. RL 31.035 (1m) and 31.036 (1m)**; and creating **ss. RL 4.01 (3g), (3r) and (5m), 4.07 and 4.09**, relating to criminal background investigations of applicants.

Exemption from finding of emergency

SECTION 4, Nonstatutory provisions., of 2003 Wisconsin Act 151 states: “(1) The department of regulation and licensing may, using the procedure under section 227.34 of the statutes, promulgate the rules under section 440.03 (13) (b) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Analysis prepared by the Department of Regulation and Licensing

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 151. Act 151 was created in response to federal Public Law 92–544, which required authorization by state statute to continue the FBI’s policy of honoring state requests for criminal background reports.

Act 151 modifies the authority of the Department of Regulation and Licensing to conduct criminal background checks of applicants and requires rule–making by the Department to conduct investigations whether an applicant for or holder of any credential issued by the Department has been charged with or convicted of a crime. The emergency rule preserves the ability of the Department to continue its practice of conducting criminal background investigations of applicants and credential holders.

Publication Date: July 3, 2004
Effective Date: July 3, 2004
Expiration Date: November 30, 2004
Hearing Date: October 1, 2004
Extension Through: March 29, 2005

2. Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

Exemption from finding of emergency

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide findings of emergency for rules promulgated under this subsection.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Publication Date: October 5, 2004
Effective Date: October 5, 2004
Expiration Date: March 4, 2005
Hearing Date: November 12, 2004

Revenue (3)

1. Rules adopted creating s. **Tax 2.99**, relating to the dairy investment credit.

Finding of emergency

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

It is necessary to promulgate this rule order to remove the threat of inappropriate credit claims and the revenue loss to the state as a result of clarification of the above terms being absent in the statutes.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

2. Rules adopted creating s. **Tax 3.04**, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

Finding of emergency

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 71.05 (6) (b) 34, Stats., provides that a subtraction from income may be claimed for “any amount of basic, special, and incentive pay received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, after being called into active federal service under the provisions of 10 USC 12302 (a) or 10 USC 12304, or into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty.”

Included under 32 USC 502 (f) are persons who are serving on active duty or full-time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats.

It is necessary to promulgate this rule order to remove the threat of inappropriate subtractions from income and the revenue loss to the state as a result of information contained in the statutes that implies persons who are serving on active duty or full-time duty in the active guard reserve program are eligible to claim the subtraction from income for military pay received by members of a reserve component of the armed forces.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

3. Rules adopted revising s. **Tax 18.07**, relating to the assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three-year lag in determining the 5-year average. Thus, the 2003 use value is based on the 5-year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5-year average interest rate for the 1998–2002 period. The 2005 use value is to be based on the 5-year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is to be based on the 2000–2004 period.

The data for the 1998–2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: December 29, 2004

Effective Date: December 29, 2004

Expiration Date: May 28, 2005

Transportation (3)

1. Rules adopted creating **ch. Trans 135**, relating to creation of a school bus oxidation catalyst grant program in certain counties.

Exemption from finding of emergency

The Legislature, by Section 2r of 2003 Wis. Act 220, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Plain Language Analysis: 2003 Wis. Act 220 requires the Wisconsin Department of Transportation, in consultation with the Wisconsin Department of Natural Resources, to develop and administer a program to provide grants for the purchase and installation of oxidation catalysts on school buses customarily kept in the counties identified in s. 110.20 (5), Stats.: Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Act 220 amends s. 20.395 (5) (hq), Stats., to provide funds for the grant program under WisDOT's vehicle inspection/maintenance (I/M) program appropriation.

Publication Date: September 1, 2004

Effective Date: September 1, 2004

Expiration Date: See Section 2r 2003 Wis. Act 220

Hearing Date: September 14, 2004

2. Rules adopted revising **ch. Trans 112**, relating to medical standards for driver licensing and general standards to school bus endorsements.

Exemption from finding of emergency

The Legislature, by Section 30 of 2003 Wis. Act 280, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Under current law, a person may not operate a school bus without a school bus endorsement issued by the Department of Transportation (DOT). DOT may issue a school bus endorsement to a person's valid motor vehicle operator's license if the person meets certain qualifications, including being free of conviction for certain crimes. A school bus endorsement is valid for the eight-year duration of the person's operator's license. Under certain circumstances, DOT must cancel the operator's license of a person to whom a school bus endorsement has been issued.

2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements for the initial issuance or renewal of a school bus endorsement. That act prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of or adjudicated delinquent for any specified disqualifying crime or offense within a prior minimum specified time. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current statutes, including various crimes against children. The act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies.

Prior to Act 280, persons were not eligible for a school bus endorsement if he or she has been convicted of listed offenses (including a felony or an "offense against public morals") within the past five years, if the circumstances of the offense are "substantially related" to the circumstances of operating a school bus, or was convicted of specified offenses (including OWI and operating with a suspended or revoked license) within the past two years, regardless of whether the circumstances of the offense are "substantially related" to the circumstances of operating a school bus. Thus, Act 280 lengthened the periods of disqualification for some offenses, and listed some offenses that arguably are not "substantially related" to the circumstances of operating a school bus.

This rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five-year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two-year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

Many of the listed offenses comprise felonies and misdemeanors. Under the rule, if a person provides evidence to the Department that his or her conviction of a listed offense is a misdemeanor conviction, the disqualification period is shortened to the next shorter disqualification period. However, there is no reduced disqualification period for misdemeanor sexual assault convictions, and the minimum

period of disqualification for any listed offense (whether felony or misdemeanor) is two years.

The rule requires the Department to conduct a criminal history record search of every applicant for initial issuance or renewal to determine whether the person is convicted of disqualifying offenses. Although a school bus endorsement is renewed every eight years, DOT must conduct a criminal history search four years after the person obtains a school bus endorsement and, if appropriate, cancel the endorsement.

The rule also requires any person applying for initial issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any disqualifying offense, and allows the department to disqualify the person for the appropriate period based on that certification.

The rule requires any person who has resided in another state within the previous two years to notify the department of those other states, and requires the department to make a good faith effort to obtain the criminal history records from those other states, including submitting the persons fingerprints to the Department of Justice for a nationwide criminal history search.

The rule allows DOT to require every applicant for initial issuance or renewal of a school bus endorsement to provide two sets of fingerprints, and to pay fees for the two criminal history records searches that will be completed at initial issuance or renewal, and four years after the person obtains the school bus endorsement.

This rule also makes minor changes to medical standards for school bus drivers not required under 2003 Wis. Act 280, including the following:

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.

2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.

3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.

4. Provides that a license restriction imposed on a physician's recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person's ability to drive.

5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

Publication Date: November 4, 2004
Effective Date: November 4, 2004
Expiration Date: See 2003 Wis. Act 280
Hearing Date: November 15, 2004

3. Rules adopted creating ss. **Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through

normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules have size limitations that prevent the use of the Milwaukee Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on-budget. Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

Publication Date: February 1, 2005
Effective Date: February 1, 2005
Expiration Date: July 1, 2005
Hearing Date: March 1, 2005

Veterans Affairs

Rules adopted creating ss. **VA 13.02 (2) (e), 13.04 (3), and 13.06**, relating to the veterans assistance program.

Finding of emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the finding of emergency is:

The department operates two community-based residential care facilities and a residential care apartment complex facility in Union Grove. As a condition of admission and continued residency at the facilities a veteran must be able to pay the full cost of his or her care from income and other resources.

Care rates at the facilities were raised across-the-board in October 2004. Several current residents do not now have sufficient income or other resources to fully pay their cost of care. Furthermore, several recent applicants with limited income and resources have been denied admission because they fall just short of meeting their care costs. Both groups of veterans do not have adequate housing available for their needs, other than residency at the Union Grove facilities.

In light of these circumstances, the department determines that the health and safety of the current and prospective residents is threatened unless adequate funding is made available. Enactment of the emergency will permit the department to provide the subsidy necessary to address these concerns.

Publication Date: January 3, 2005
Effective Date: January 3, 2005
Expiration Date: June 1, 2005
Hearing Date: February 16, 2005

Workforce Development

(Labor Standards, Chs. DWD 270–279)

Rules adopted revising ss. **DWD 274.015 and 274.03** and creating s. **DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

Workforce Development

(Public Works Construction, Chs. DWD 290–294)

A rule was adopted amending s. **DWD 290.155 (1)**, relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 20, 2004
Effective Date: January 1, 2005
Expiration Date: May 30, 2005
Hearing Date: February 14, 2005

Scope statements

Elections Board

Subject

Section EIBd 1.39. Scope of regulated activity: the conversion of a federal campaign committee to a state campaign committee and the contribution of funds from a federal campaign committee to a state campaign committee.

Policy analysis

Objective of the rule. To amend the Elections Board's existing rules; to prohibit the conversion of federal campaign committees into state campaign committees and limit the contributions from federal campaign committees to state campaign committees to the maximum contribution allowable from a single committee to a state campaign committee registered for the office sought.

Existing Wisconsin policy allows a federal campaign committee to become a state campaign committee and to use the money that was in the federal campaign account in the state campaign without limitation or prohibition and with a minimum of reporting. The Board's proposed rule would prohibit conversion of a federal campaign committee to a state campaign committee and would limit the amount of federal money that may be contributed to the state campaign committee for use in a Wisconsin campaign.

Statutory authority

Sections 5.05 (1) (f) and s. 227.11 (2) (a), Stats

Staff time required

At least 25 hours of state employees' time.

Entities affected by rule

The rule will affect the campaign committee of each of Wisconsin's eight members of the United States House of Representatives and Wisconsin's two U. S. Senators. Theoretically, the rule could affect the campaign committee of any other federal officeholder who was considering running for a state office in the State of Wisconsin. The likelihood of the latter circumstances is remote.

Comparison with federal requirements

The rule reverses the effect of a recent congressional change in 2 USC 439(2001) of the Federal Election Campaign Act of 1971 (as amended) – See H.R. 4818, s. 532 (3) and 532 (4).

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, the United States Congress amended the Federal Election Campaign Act to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee – regardless of the source of those funds – if state law permitted, and subject to the state law's requirements and restrictions. (See H.R. 4818, s. 532 (3) and 532 (4).

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted.

Wisconsin law, under the Board's current rule, s. EIBd 1.39, Wis. Adm. Code, allows for conversion of a federal campaign committee, and its funds, to a state campaign committee without regard to source of those funds and without regard to Wisconsin contribution limitations.

The rule amends s. EIBd 1.39 to prohibit the conversion of a federal campaign committee to a state campaign committee and restricts the contribution from a federal campaign committee to a state campaign committee to the maximum allowable from a single committee to a candidate for the office being sought.

Financial Institutions – Banking

Subject

Rules relating to collection agencies practices.

Policy analysis

Chapter DFI—Bkg 74, relating to collection agencies, has not been updated to reflect changes in the law, current industry practices or electronic commerce since 1993, and with only minimal updates at that time. The rule repeals and recreates ch. DFI—Bkg 74 to reflect these changes. While portions of ch. DFI—Bkg 74 remain the same, substantial changes to the chapter warranted its repeal and recreation. The rule addresses definitions, office requirements, office relocations and material changes, agreements and acknowledgments, remittance statements, trust fund accounts, books and records, disclosure of rates in advertising, reports to creditors, procedures for return or cancellation of accounts, general matters, annual reports, fair collection practice notices, in house collectors, operating from residences, unauthorized practice of law, prohibited practices, and use of data processing. The revisions are made in consultation with the Wisconsin Collectors Association, the Wisconsin State Bar and other industry representatives.

Statutory authority

Sections 218.04 (7) (d) and 227.11 (2), Stats.

Staff time required

250 hours.

Entities affected by rule

Collection agencies.

Comparison with federal requirements

The Fair Debt Collection Practices Act also addresses third party collection practices.

Insurance

Subject

Objective of the rule. This proposed rule will address authorizing mortgage guarantee insurers to issue coverage for mortgages issued by affiliates or a person related to an affiliate.

Policy analysis

Under s. Ins 3.09 (19), Wis. Adm. Code, a mortgage guarantee insurer is prohibited, subject to limited exception,

from issuing coverage on a mortgage issued by an affiliate. The proposed rule will modify this restriction to allow issuance of such coverage, subject to standards intended to protect the solvency of the insurer.

Statutory authority

This rule is authorized under ss. 601.41, 611.19 (1), 611.24, 618.21, 627.05 and 628.34 (12) and chs. 620 and 623, Wis Stat.

Staff time required

200 hours and no other resources are necessary.

Comparison with federal requirements

None.

Entities affected by rule

Mortgage guarantee insurer.

Natural Resources

Subject

The purpose of this package is to develop a permanent rule that provides a standardized method for measuring exhaust noise emitted from all terrain vehicles (ATVs) that exceed 96 decibels.

Policy analysis

On April 28, 2004 Act 251 became effective. Act 251 provided a maximum noise level (96 decibels) that ATVs are required to comply with. However, the Act did not describe the test procedure that would be used to measure ATV noise, leaving the method of testing to be prescribed by rule. The proposed rule will provide a uniform test procedure for testing ATV noise emissions so that enforcement officers will be able to determine if ATVs comply with the 96 decibel limit.

The National Association of OHV Program managers had coincidentally convened and discussed ATV noise issues in March 2004. From that meeting, the National Association adopted a resolution encouraging all states to adopt a maximum noise level of 96 decibels as measured in accordance with the Society of Automotive Engineer's noise measuring standard SAE J1287.

This proposed rule would coincide with the resolution adopted by state program managers.

Statutory authority

Sections 227.11 (2) (a), and 23.33 (6m).

Staff time required

51 hours.

Entities affected by rule

This rule will impact ATV riders who have failed to maintain their machine's exhaust system and/or those ATV riders who modify their exhaust systems to be unusually loud and in excess of 96 decibels when measured in accordance with the Society of Automotive Engineer's noise measuring standard SAE J1287.

Comparison with federal requirements

Federal laws regulating ATV exhaust noise are specific to property sites owned/managed by the Federal Government (National Parks, U.S. Forests and lands managed by the Bureau of Land Management). Not all Federal properties have regulations that regulate noise; however, those that do have general rules that either prohibit "obnoxious" noise from vehicles (ATVs) or they prohibit noise above 96 decibels.

Natural Resources

Subject

Objective of the rule. The Department requests authorization to begin development of an administrative rule to establish a grant program to enable private landowners to enhance rare species habitat on their property. The Landowner Incentive Program, funded through a grant from the U.S. Fish and Wildlife Service, will provide technical and financial assistance to private landowners with federally listed, state listed, or other at-risk species and rare or declining natural communities on their land. The ultimate goal of the program is to support the recovery of these rare species and natural communities and to prevent their further decline.

Policy analysis

To avoid a loss of biological diversity, private landowners and land managers in Wisconsin need financial incentives and technical assistance to most effectively protect and manage species-at-risk and the habitat that supports them.

With over 85% of Wisconsin's land in private ownership, landowners and land managers truly are the key to protecting rare species and their habitats. Currently many landowners and land managers in Wisconsin are voluntarily protecting federal and state listed species on private land through the Bureau of Endangered Resources Landowner Contact Program. The Landowner Contact Program concentrates on outreach and education efforts, and offers limited management recommendations. However, this program has limitations because it cannot offer financial incentives.

The biggest threat to many rare species is loss or degradation of habitat. Land use changes in remote areas, changing agricultural practices, the introduction and spread of invasive exotic species, and succession in the absence of disturbance all change the habitat of our native plant and animal species. Though the landscape of the state will continue to change, landowners and land managers have considerable control over the fate of rare species. To most effectively manage for rare species and habitats, private landowners and land managers need technical and financial assistance. The Landowner Incentive Program will provide this assistance, aid in the recovery of species, help prevent the further decline of rare species and help prevent federal and state listing.

Statutory authority

Sections 227.11, and 29.604, Stats.; and Department of the Interior and Related Agencies Appropriations Act of 2002, Public Law 107-63; Title I; Land and Water Conservation Fund Act of 1965 U.S. C. 4601-4 through 11.

Staff time required

The Department will need approximately 120 hours of staff time.

Comparison with federal requirements

Several grant programs provide opportunities for private landowners to manage their land for rare species. The U.S. Fish and Wildlife Service provides grants to private landowners through the Partners for Fish and Wildlife Program and the Private Stewardship Grant Program, which both focus on species listed at the federal level as endangered or threatened. The Natural Resources Conservation Service provides funds to private landowners to restore habitat for federal or state listed species or special concern species through the Wildlife Habitat Incentive Program.

The Landowner Incentive Program is an opportunity to address the gaps in existing funding and tailor a program

unique to Wisconsin. The program will be developed with a Guidance Team of governmental and non-governmental organizations who will analyze existing programs and develop the priorities for the Landowner Incentive Program.

Natural Resources

Subject

The purpose of this package is to develop a rule that simplifies registration and trailpass requirements for nonresident all terrain vehicle (ATV) riders. This package proposes a permanent rule to revise NR 64.03 Wis. Administrative Codes, pertaining to ATV nonresident trail passes and display requirements.

Policy analysis

Section 23.33 (2), Stats., requires all-terrain vehicles (ATVs) operated in WI to be registered with either a WI registration or an out of state registration. Recent legislation (2003 Act 251), required nonresident ATVs operating in Wisconsin to also display a nonresident trailpass. The nonresident trailpass was created at the request of the Wisconsin ATV Association for two main reasons;

1. Nonresidents acquiring a trailpass would generate revenues that will be directed back to the ATV account for future trail maintenance needs.

2. For those nonresidents whose home state did not register ATVs, the trail pass was intended to fulfill the registration requirement. The trail pass could be easily acquired at any ALIS vendor and it would allow visitors quicker access to

trails without having to wait 4–6 weeks for a Wisconsin registration.

Unfortunately the legislation did not address a registration exemption that was needed for nonresidents whose home state did not have an ATV registration program. This omission resulted in some nonresidents still having to register their ATVs in Wisconsin. This requirement complicates some nonresidents' vacation plans with registration delays and created confusion for visitors. As well, the legislation did not specify which part of the ATV the trail pass should be prominently displayed.

This rule proposes to exempt nonresident ATVs from the registration requirement and instead require the nonresident ATV to display only a nonresident trail pass. The rule will also direct the user to affix the nonresident trail pass prominently visible on the forward half of the ATV. This rule will not change the requirement for nonresidents to register their ATVs in Wisconsin if the ATVs are in this state for a period of more than fifteen consecutive days.

Statutory authority

Section 23.33 (2) (b) 5., Stats.

Staff time required

51 hours.

Entities affected by rule

This rule will impact ATV riders who do not have their ATVs registered in Wisconsin.

Comparison with federal requirements

There are no Federal regulations administering the issuance of ATV registrations or annual trailpasses for ATVs so there are no comparisons to be made.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Natural Resources

Rule Submittal Date

On February 15, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. NR 10 of the Wisconsin Administrative Code and relates to deer hunting as it relates to the management of chronic wasting disease.

Agency Procedure for Promulgation

A public hearing is required and hearings are scheduled for March 14, 15 and 16, 2005. The Department's Bureau of Wildlife Management is primarily responsible for preparing the rule.

Contact Information

Kurt Thiede
608-267-2452

Natural Resources

Rule Submittal Date

On February 15, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects chs. NR 10, 12, 15 and 45 of the Wisconsin Administrative Code and relates to hunting and trapping regulations.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for April 11, 2005. The Department's Bureau of Wildlife Management is primarily responsible for preparing the rule.

Contact Information

Kurt Thiede
608-267-2452

Natural Resources

Rule Submittal Date

On February 15, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. NR 20 of the Wisconsin Administrative Code and relates to fishing on the inland; outlying and boundary waters of Wisconsin.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for April 11, 2005. The Department's Bureau of Wildlife Management is primarily responsible for preparing the rule.

Contact Information

Kurt Thiede
608-267-2452

Natural Resources

Rule Submittal Date

On February 15, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. NR 488 of the Wisconsin Administrative Code and relates to revising regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for March 22, 2005. The Department's Bureau of Air Management is primarily responsible for preparing the rule.

Contact Information

Lance Green
608-264-6049

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection (reprinted from 2/15/05 Register)

[CR 05-013]

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule relating to nutrient management on farms (ATCP 50). The department will hold the hearings at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. The department will manage oral testimony to ensure that everyone has an opportunity to speak. These hearings will be held in conjunction with hearings on a rule related to livestock facility siting (ATCP 51). DATCP has issued a separate hearing notice related to the livestock facility siting rule.

Following the public hearing, the hearing record will remain open until April 7, 2005, for additional written comments. Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management attention Sue Porter, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to sue.porter@datcp.state.wi.us.

You may obtain a free copy of the proposed rule and supporting documents such as the environmental assessment, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4605 or emailing sue.porter@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

http://www.datcp.state.wi.us/arm/regulation/proposed_rules.html

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **February 28, 2005**, by writing to Sue Porter, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4605. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearings with location information:

Date: **Monday, March 14, 2005**
 Location: Fort Community Credit Union
 100 N. Main St.
 Jefferson, WI 53549
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 15, 2005**
 Location: Heidel House
 643 Illinois Ave
 Green Lake, WI 54941
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 17, 2005**
 Location: Ramada White House
 1450 Veterans Drive
 Richland Center, WI 53581
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 22, 2005**
 Location: UW-Manitowoc Center
 705 Viebahn St.
 Manitowoc, WI 54220
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Wednesday, March 23, 2005**
 Location: Northcentral Technical College
 1000 W. Campus Dr.
 Wausau, WI 54401
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 24, 2005**
 Location: Chippewa Valley Technical College
 620 W. Clairemont Ave.
 Eau Claire, WI 54701
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection ("DATCP") regulates plant nutrients to maintain and improve water quality. DATCP proposes to amend the current nutrient management rules for farms. Current rules are based on nitrogen, not phosphorus. This rule would incorporate updated federal standards based on nitrogen *and* phosphorus. Phosphorus is a key nonpoint source pollutant, and phosphorus levels in soil are increasing due to excessive phosphorus applications.

Current nutrient management rules apply to all farms, not just livestock operations. Current rules are scheduled to take effect in 2005 in some watersheds, and 2008 elsewhere. However, enforcement of current rules is contingent on cost-sharing (per current state law), so the availability of cost-share funding will limit actual implementation.

By adding a phosphorus standard to current nutrient management rules, this rule will increase compliance costs for farmers. This rule will have the greatest impact on livestock operators, who may incur additional costs related to the disposal of manure (which provides more phosphorus than nitrogen, compared to crop needs). However, this rule does not change current rule effective dates or cost-sharing requirements.

Statutory authority: ss. 93.07 (1), 92.05 (3) (k) and 281.16 (3) (b), Stats.

Statutes interpreted: ss. 92.05 (3) (k) and 281.16 (3) (b), Stats.

DATCP has general authority to adopt rules interpreting statutes under its jurisdiction (see s. 93.07 (1), Stats.). DATCP

is specifically authorized to adopt farm conservation standards, including standards for nutrient management on farms (see ss. 92.05 (3) (k) and 281.16 (3) (b), Stats.).

Background

Under current DATCP rules (ch. ATPC 50, Wis. Adm. Code), all farmers who apply manure or commercial fertilizer to cropland (not just livestock operators) must have nutrient management plans. This requirement takes effect on January 1, 2005 in certain watersheds and January 1, 2008 elsewhere. Under current rules, enforcement of nutrient management requirements is contingent on cost-sharing.

Under current DATCP nutrient management rules, a nutrient management plan must comply with all of the following requirements:

- It must be prepared or approved by a qualified nutrient management planner. A farmer may prepare his or her own plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified under current rules.
- It must identify the lands on which the operator will apply manure and other nutrients.
- It must be based on soil tests that determine the nutrient needs of the affected cropland. A soil test laboratory, certified by DATCP, must conduct the soil tests.
- It may not call for nutrient applications in excess of amounts needed to achieve crop fertility levels recommended by the University of Wisconsin (there are limited exceptions).
- It must comply with nutrient management standards published by the Natural Resource Conservation Service of the United States Department of Agriculture ("NRCS").

Rule Content

This rule modifies current DATCP nutrient management rules as follows:

Updated Federal Standard

Current DATCP rules incorporate an outdated version (March, 1999) of the NRCS nutrient management standard. This rule incorporates an updated NRCS standard. A nutrient management plan (if required) must adhere to the following provisions in the new standard (many, but not all, of these provisions already apply under the current standard):

- The nutrient management plan must consider all primary nutrients – nitrogen, phosphorus, and potassium. The older NRCS standard focused on nitrogen rather than phosphorus and potassium. Phosphorus is a key nonpoint pollutant, and has been applied in excessive amounts (as reflected in rising average soil-test phosphorus levels in Wisconsin). The new standard will limit excessive phosphorus applications.
- Nutrient applications may not exceed the amounts needed to achieve soil fertility levels recommended by the University of Wisconsin for crops in the farmer's rotation (there are some exceptions). These recommendations are designed to achieve optimal economic returns for farmers. Phosphorus and potassium needs are generally determined over a crop rotation, so that some buildup of these nutrients is permitted in anticipation of future crop needs during the rotation.
- The nutrient management plan must consider all nutrient sources, including existing nutrients in the soil, manure applications, fertilizer applications, and nitrogen from legumes. The plan must account for relevant limitations on nutrient applications — for example, on frozen land, near water bodies, or on highly eroding fields (see below).
- Nutrient calculations must take into account the amount and timing of nutrient applications from all sources.

- Soil tests must be used to determine existing soil fertility levels (soil tests must be not more than 4 years old).
- Nutrient management plans must be updated annually (to account for relevant changes in cropping patterns, land base, nutrient applications, soil test results, etc.). Each annual update must document and consider relevant cropping patterns and nutrient applications from the preceding year.
 - Manure nutrient content may be determined by laboratory analysis or from standard "book values" specified in the NRCS standard. Labs performing manure analyses must meet standards specified in the rule.
 - Nutrients may not run off the field during application.
 - Nutrients may not be spread in certain areas, including the following:
 - Fields eroding in excess of "T-value" levels (the standard specifies acceptable methods for calculating erosion rates).
 - Surface water areas, or areas of established concentrated flow.
 - Permanent non-harvested vegetative buffers or wetlands.
 - Areas within 50 feet of drinking water wells.
 - Areas within 200 feet up-slope of direct conduits to groundwater (such as wells, sinkholes, fractured bedrock, tile inlets or mine openings), unless the nutrients are effectively incorporated within 72 hours.
 - Nutrients may not be applied to frozen or snow-covered land within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.
 - Liquid manure may not be applied to frozen or snow-covered land at a rate of more than 7,000 gallons per acre.
 - Manure may not be applied to frozen or snow-covered land at a rate that provides more phosphorus than will be used by crops in the next growing season.
 - Manure may not be applied to frozen or snow-covered land that has a slope greater than 9% (12% if contour-cropped).
 - Commercial fertilizer may not be applied to frozen or snow-covered land, except on pasture or surfaces planted in winter grains.
 - At least one of the following practices must be used when applying nutrients to unfrozen surfaces within 1,000 feet of a navigable lake or within 300 feet of a navigable stream:
 - Install or maintain permanent vegetative buffers.
 - Maintain 30% crop residue or vegetative cover on the soil surface after application.
 - Incorporate nutrients within 72 hours, leaving adequate residue so that erosion does not exceed "T-value."
 - Establish cover crops promptly following application.
 - Liquid manure applications (less than 12% solids) to unfrozen land within 1,000 feet of a navigable lake or 300 feet of a navigable stream may not exceed rates specified in the rule.
 - In order to minimize nitrogen loss to groundwater in certain sensitive areas, most crop nitrogen must be applied to those areas after the crop is established in the spring. This applies to areas with coarse soils, areas with less than 20 inches to bedrock or 12 inches to water table, and areas within 1000 feet of a municipal well.
 - In order to minimize phosphorus losses to surface water, a farmer must use one of the following strategies (and establish perennial vegetative cover where there are recurring gullies):

– Maintain a phosphorus index, calculated according to the Wisconsin phosphorus index model, at or below a level of 6. Stop phosphorus applications to fields that exceed that index level, unless UW recommendations call for additional phosphorus applications (based on soil tests and crop needs).

– Regulate phosphorus applications based on soil tests. Forego or limit phosphorus applications as necessary, based on soil test levels and phosphorus removal by relevant crops (the standard specifies application limits based on soil test levels).

Excess Nutrient Applications

Under current DATCP rules, a nutrient management plan may not recommend nutrient applications that exceed the amounts needed to achieve fertility levels recommended by the university of Wisconsin for relevant crops. However the current rules allow certain exceptions.

One current exception allows for excess soil nutrient values caused by manure applications in prior years. This rule limits that exception, so that it only applies to manure applications in the year immediately preceding implementation of the nutrient management plan.

The current rules also permit excess nutrient applications for the following reasons:

- The farmer applies only organic nutrients (such as manure).
- Excess nutrients from organic nutrient applications will be used later in the planned crop rotation.
- Fields with corn following corn receive conservation tillage with greater than 50% residue after planting.
- Starter fertilizer is properly applied to row crops.
- The crop is irrigated.

This rule eliminates these exceptions, because these conditions are more precisely addressed in the (updated) NRCS technical guide nutrient management standard 590 (incorporated in this rule). This rule, like the current rules, permits excess nutrient applications based on special agronomic conditions documented by the nutrient management planner.

Cost-Sharing and Initial Applicability Not Affected

This rule does not change the previously-established effective dates for DATCP nutrient management rules (2005 in some watersheds, and 2008 elsewhere), nor does it change current cost-sharing requirements (enforcement of nutrient management standards is normally contingent on cost-sharing). Those effective dates and cost-sharing provisions still apply under this rule.

Environmental Impact

This rule will protect the environment by preventing excess nutrient applications that can result in nonpoint source pollution of surface water and groundwater. Nonpoint source pollution from farms has a major impact on surface water and groundwater quality.

Fiscal Impact

This rule will not have a major fiscal impact on DATCP or local units of government. This rule will change applicable standards for nutrient management plans, but will not increase the number of nutrient management plans required. Enforcement of this rule is generally contingent on cost-sharing. DATCP estimates that approximately \$25 million in *additional* cost-share funding would be needed each year in order to fully implement this rule within 10 years. This rule does not mandate additional state or local review of nutrient management plans (beyond what already exists). County conservation staff currently review and monitor

nutrient management plans as necessary, on farms that are required to have those plans.

DATCP and county land conservation staff will need to become familiar with the new standards. Staff will need to provide information and education about the new standards, and respond to questions from farmers and others. DATCP will undertake these new responsibilities with existing staff. DATCP estimates that counties will likewise be able to implement the revised standards with existing staff. A complete fiscal estimate may be obtained by calling (608) 224-4605 or emailing sue.porter@datcp.state.wi.us.

Business Impact

This rule will have a substantial impact on agricultural producers and other businesses.

Agricultural Producers

To the extent that it is implemented, this rule will increase costs for livestock operators and crop producers who are required to implement nutrient management plans. However, rule implementation is contingent on cost-sharing. Actual implementation will depend on the availability of cost-share funds. Without cost-sharing, most agricultural producers will not be obligated to comply.

This rule will not increase the number of nutrient management plans required, but will affect the content of the plans. It will also affect the farming practices needed to comply. This rule will have the greatest impact on livestock operations. It will have less impact on non-livestock crop producers. For livestock operations, the impact is primarily related to new phosphorus management requirements (current standards are based primarily on nitrogen, not phosphorus).

Manure generally provides higher amounts of phosphorus than nitrogen, compared to typical crop needs. So, livestock operators may need more acreage for manure disposal, to avoid excessive phosphorus applications. Costs will vary widely by livestock species, size of livestock operation, geographic location, cropping patterns, current nutrient content of soil, and availability of acreage for manure disposal. Non-livestock crop producers will be less affected, and may actually reduce their fertilizer costs by avoiding excessive phosphorus applications.

DATCP has estimated the costs to implement the new phosphorus standard, *assuming that the standard is fully implemented* (this will require cost-share funding that is not currently available). The estimate represents the annual incremental cost, over and above the cost to implement the *existing* (nitrogen-based) standard. DATCP estimates the statewide incremental cost, by livestock sector, as follows (estimation method described in attached *business impact assessment*):

Dairy:	\$1.5 million
Beef:	\$1.5 million
Swine:	\$0.5 million
Poultry:	\$2.8 million

Actual costs to the industry will be much less, because compliance is contingent on cost-sharing and cost-share funds are limited. Many farmers may never be required to comply. Cost-share payments will offset part of the cost for many who comply.

Under current rules, a cost-share offer must cover 70% of the cost to conduct soil tests and prepare a nutrient management plan (90% if there is financial hardship), or \$7 per cropland acre, whichever amount is greater (the farmer chooses). The percentage rate applies only to costs of writing a nutrient management plan and performing soil tests (not manure hauling, etc.). The flat-rate payment (\$7 per acre) applies regardless of actual costs.

Cost-share payments (whether flat-rate or percentage) are limited to 4 years. After that, the farmer assumes the full cost of compliance. Once a farmer achieves compliance, the farmer must maintain compliance regardless of cost-sharing. If a farmer falls out of compliance, the farmer is not eligible for cost-sharing to regain compliance.

In cost-share transactions to date, nearly all farmers have chosen the flat-rate (\$7 per acre) payment. If farmers need additional acres to landspread manure (as many will under a phosphorus standard), the total cost-share payment will increase accordingly (even if the rate per acre does not change). The limited availability of state cost-share funds will limit actual enforcement of nutrient management requirements. Available funds will be allocated among fewer operations.

Some livestock operators must comply with nutrient management requirements *under other applicable law*, regardless of cost-sharing (and regardless of whether DATCP nutrient management rules would otherwise apply prior to 2008). These include:

- Operators who need a point source pollution discharge permit under NR 243 (mainly operations over 1,000 animal units).
- Operators who need a permit, under a local manure storage ordinance, for a voluntarily constructed manure storage facility (see current ATCP 50.54 (2) (b)).
- Operators who need a local permit for a new or expanded livestock facility with 500 or more “animal units,” according to DATCP’s *proposed* livestock facility siting rule (not this rule).

For more information contact DATCP small business regulatory coordinator Dennis Fay at (608) 224-5031 or email at dennis.fay@datcp.state.wi.us.

Federal Regulations

The federal government does not regulate nutrient management on farms except that, under the federal Clean Water Act, certain concentrated animal feeding operations are subject to federal regulation as water pollution “point sources.” DNR regulates these operations by permit, under authority delegated from the United States Environmental Protection Agency (EPA).

NRCS is proposing updated nutrient management standards based on phosphorus as well as nitrogen. NRCS does not enforce its standards as mandatory standards, except for operations that receive cost-share funding from NRCS. However, DNR and DATCP have incorporated these federal standards in state nutrient management rules. DATCP is proposing to incorporate updated NRCS standards in this rule.

Adjacent State Regulations

Surrounding states regulate nutrient management in a variety of different ways. Most of the states regulate phosphorus, as well as nitrogen. A description of other state programs is found in the plain language *analysis* that accompanies this rule.

Businesses Affected

Those effected are small businesses, as defined by s. 227.114 (1) (a), Stats.

This rule will have a substantial impact on agricultural producers as discussed above in the Business Impact section. In addition, this rule may increase farmer demand for services provided by the following businesses:

- Nutrient management planners.
- Soil and manure testing laboratories.

- Manure haulers.
- Construction contractors and conservation planners (practices to reduce soil erosion).

This rule will likely reduce sales of commercial phosphorus fertilizers, but may increase sales of commercial nitrogen fertilizer to meet crop needs (where manure applications are curtailed because of phosphorus constraints).

Reporting, Recordkeeping and Other Procedures Required for Compliance

Reporting and recordkeeping requirements of the NRCS nutrient management standard are stated above in the Rule Content section. Current DATCP rules incorporate an outdated version (March, 1999) of the NRCS nutrient management standard. This rule incorporates an updated NRCS standard. A nutrient management plan (if required) must adhere to the following provisions in the new standard (many, but not all, of these provisions already apply under the current standard).

The updated NRCS standard requires field features to be identified on maps or aerial photos in the plan. These features include field boundary, soil type, field identification, areas prohibited from receiving nutrients such as surface water, grassed waterways, sinkholes, land where vegetation is not removed, areas within 50 feet of a potable drinking well, and fields eroding at a rate exceeding tolerable soil loss (T). Other field features to be identified on maps are areas restricted from receiving winter nutrient applications. These areas are slopes greater than 12% and slopes greater than 9% that are not contoured, surface water quality management areas (land within 1,000 feet of lakes and ponds or within 300 feet of perennial streams), and areas within 200 feet upslope of direct conduits to groundwater.

All farmers required to have a nutrient management plan, will need to maintain planned and applied records for each fields nutrient application rates, timing, and methods of all forms of N, P, and K listed in the plan and consistent with UW Publication A 2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, and the 590 standard. This procedure is already required under the current rule.

A single phosphorus assessment of either the Phosphorus Index or soil test phosphorus management strategy must be uniformly applied to all fields within a tract.

Professional Skills Required to Comply

The proposed changes affect how nutrients, particularly phosphorus can be applied to fields. This rule may require moving manure to fields testing lower in phosphorus. However, phosphorus applications can still occur on fields testing excessively high for phosphorus if they are 25% less than the crop rotation’s phosphorus removal over a 4 year period. Because nutrient management planning involves crop rotations, crop nutrient removal, and the predicted soil erosion levels of these crop rotations, nutrient management planners need an understanding of conservation planning and soil fertility management.

While anyone can develop nutrient management plans if they are knowledgeable, adoption of nutrient management planning on individual farms will in some cases require assistance. Training for producers, agronomists, and conservation staff has been provided by University of Wisconsin Extension personnel and agency staff in the past. In recent years, many farmers have been using crop consultants to plan and recommend nutrient applications. The department anticipates these information sources will continue to be used as the primary sources of information for crop producers.

Notice of Hearings

Agriculture, Trade and Consumer Protection (reprinted from 2/15/05 Register)

[CR 05-014]

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") announces that it will hold public hearings on a proposed rule (ATCP 51) to implement Wisconsin's Livestock Facility Siting Law (s. 93.90, Stats.). DATCP will hold the hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on this proposed rule. DATCP will manage oral testimony to ensure that everyone has an opportunity to speak.

DATCP will hold these hearings in conjunction with hearings on another rule (ATCP 50), relating to nutrient management. This livestock siting rule (ATCP 51) incorporates the same nutrient management standards proposed in that other rule. DATCP has issued a separate notice of hearing on the nutrient management rule.

Following the public hearing, the hearing record will remain open until April 7, 2005, for additional written comments. Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management attention Dilip Patel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to Dilip.Patel@datcp.state.wi.us.

You may obtain a free copy of the proposed rule, and supporting documents such as the environmental assessment, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4608 or 224-4610 or emailing Dilip.Patel@datcp.state.wi.us or Richard.Castelnuovo@datcp.state.wi.us. Copies will also be available at the hearings. To view this proposed rule online, go to:

http://www.datcp.state.wi.us/core/environment/land-water/siting_rule.html

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **February 28, 2005**, by writing to Dilip Patel, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4610. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearings with location information:

Date: **Monday, March 14, 2005**
 Location: Fort Community Credit Union
 100 N. Main St.
 Jefferson, WI 53549
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 15, 2005**
 Location: Heidel House Resort
 643 Illinois Avenue
 Green Lake, WI 54941
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 17, 2005**
 Location: Ramada White House
 1450 Veterans Dr.
 Hwy 14 East & Veterans Dr.
 Richland Center, 53581
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 22, 2005**
 Location: UW Manitowoc Center
 705 Viebahn Street
 Manitowoc, WI 54220
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Wednesday, March 23, 2005**
 Location: Northcentral Technical College
 1000 W. Campus Drive
 Wausau, WI 54401
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 24, 2005**
 Location: Chippewa Valley Technical College
 620 West Clairemont Avenue
 Eau Claire, WI 54701
 Times: 12:30-4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Wisconsin's Livestock Facility Siting Law (s. 93.90, Stats.) is designed to facilitate the siting of new and expanded livestock facilities in Wisconsin. The law establishes a general statewide framework for local approval of new or expanded livestock facilities. The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes this rule to implement the Livestock Facility Siting Law.

Statutory Authority: ss. 93.07 (1), 92.05 (3) (k), 93.90 (2) and 281.16 (3) (b), Stats.

Statutes interpreted: ss. 92.05 (3) (k), 93.90 and 281.16 (3) (b), Stats.

Summary of Rule Contents

Livestock Facilities Covered by This Rule

This rule applies *only* to new or expanded livestock facilities that require local approval, and *only* if those facilities will have 500 or more "animal units" (or will exceed a lower threshold incorporated in a local zoning ordinance prior to July 19, 2003). DATCP estimates that this rule will apply to approximately 50-70 local siting applications each year.

This rule applies *only* to facilities that keep *cattle, swine, poultry, sheep or goats*. This rule does *not* apply to facilities that keep only horses, farm-raised deer, fish, captive game birds, ratites (such as ostriches or emus), camelids (such as llamas or alpacas) or mink.

Application for Local Approval

To obtain local approval, a livestock operator must complete the *application form* and *worksheets* attached to this rule. The *application form* and *worksheets* elicit key information to show compliance with the siting standards in this rule.

If an application contains the information required by this rule, the local government *must approve* the proposed

livestock facility unless the local government finds, based on other clear and convincing evidence in the local record, that the facility fails to meet the siting standards in this rule. By spelling out clear application requirements and approval standards, this rule adds certainty to the application and decision-making process.

An application for local approval must include all of the following:

- Applicant information.
- A *description of the proposed livestock facility*, including the types of livestock and the number of “animal units” for which the applicant seeks approval. The applicant must calculate animal units according to an *animal units worksheet (worksheet 1)*. The application must show the *maximum* number of “animal units” the applicant proposes to keep on at least 90 days during any 12-month period. If the local government approves the proposed livestock facility, this is the number of “animal units” approved (the operator may not exceed this number without further approval).
- An *area map*. The area map must show a 2-mile radius around the proposed facility (with topographic lines at 10-foot elevation intervals). The map must show relevant features, including current and proposed livestock structures.
- A *site map*. The site map must show a 1,000 foot radius around the proposed facility (with topographic lines at 2-foot elevation intervals for the area within 300 feet of livestock structures). The map must show relevant features, including current and proposed livestock structures. The applicant must certify that livestock structures will comply with applicable property line and water quality setbacks in this rule.

- The following *worksheets*:
 - Animal units (worksheet 1).
 - Odor management (worksheet 2).
 - Waste and nutrient management (worksheet 3).
 - Waste storage facilities (worksheet 4).
 - Runoff management (worksheet 5).
 - Mortality management (worksheet 6).

An applicant who holds a WPDES permit from DNR for the *same proposed livestock facility* (and the same or greater number of animal units) is not required to submit worksheets 3, 4 and 5, but must submit worksheets 1, 2 and 6.

The application form includes a *notice of other laws* that may apply to livestock operations. The notice makes the applicant aware of these laws. But except as specifically provided in this rule, the listed laws are *not* used as standards for local siting decisions (other compliance and enforcement mechanisms apply).

A local government may not alter the application form (except for limited purposes specified in this rule). A local government may charge a reasonable application fee, not to exceed \$500, to offset its costs to review and process the application. A local government may *not* charge any other fee, or require the applicant to post any bond or security with the local government.

Property Line Setbacks

New livestock structures, and livestock structures enlarged by more than 20%, must comply with property line setbacks under this rule. The following setbacks apply, unless a local ordinance specifies shorter setbacks:

- The structures must be located at least 100 feet from property lines and roads.
- The structures must be located at least 200 feet from property lines other than roads, and 150 feet from roads, if the livestock facility will have 1,000 or more animal units.

Water Quality Setbacks

This rule does not create new water quality setbacks, but requires compliance with applicable shoreland zoning ordinances, floodplain zoning ordinances and well code.

Odor Management; Livestock Structures

The following livestock facilities must have a positive “adjusted odor index,” calculated according to the *odor management worksheet (worksheet 2)*:

- A *new* livestock facility with more than 500 “animal units.”
- An *expanded* livestock facility with more than 1,000 “animal units.”

The “adjusted odor index” indicates the likelihood of objectionable odors from livestock structures, based on:

- The type of livestock, and the nature, size and location of livestock structures.
- Distances from *high odor* livestock structures (such as waste storage facilities) to non-consenting neighbors.
- Odor management and good neighbor practices the applicant will implement.

An applicant can improve the “odor index” score by implementing *odor management* practices (to reduce odors) and *good neighbor* practices (which do not reduce odor but may reduce conflicts with neighbors). A local government may also grant some discretionary credit, if it wishes to do so.

Odor Management; Land Application of Stored, Untreated Liquid Manure

A livestock operator must use at least one of the following practices when applying *untreated liquid manure that has been stored for at least 7 days*:

- Inject the manure directly into the soil.
- Incorporate the manure into the soil within 48 hours (or as soon as weather permits).
- Cover the manure with vegetative residue within 48 hours (or as soon as weather permits).
- Apply the manure at least 500 feet from the nearest “non-affiliated residence” and from the nearest “high public use area” (distances do not apply if owner consents in advance to manure application).
- Apply the manure during only 2 weeks of the year (at least 500 feet from the nearest “high public use area.”)

• Comply with an odor management plan approved by the local government (operator proposes plan). A plan might include, for example, advance notice to neighbors or avoiding applications at sensitive times.

• Comply with less restrictive manure application odor setbacks enacted by local ordinance.

This rule does *not* regulate application of fresh manure (stored less than 7 days), solid or heavily bedded manure, or manure that is effectively treated to reduce odor (such as by anaerobic digestion or substantial dilution).

Waste and Nutrient Management

A livestock operator must manage manure and other waste responsibly, according to standards in this rule. A *waste and nutrient management worksheet (worksheet 3)* must accompany every application for local approval. The completed *worksheet* must include all of the following:

- The types and amounts of manure and other waste that the livestock facility will generate.
- Waste storage methods, duration and capacity.
- Final waste disposition (by landspreading or other means).
- Acreage available for landspreading (include map).

- A *nutrient management checklist*, signed by a qualified nutrient management planner. This checklist is *not* required for a livestock facility with fewer than 500 “animal units” if the operator meets a minimum ratio of land to “animal units.”

Waste Storage Facilities

Waste storage facilities must meet standards in this rule, to provide reasonable assurance against leakage or structural failure. A *waste storage facility worksheet (worksheet 4)*, signed by a registered professional engineer or certified agricultural engineering practitioner, must accompany an application for local approval.

- New or substantially altered waste storage facilities lots must meet current NRCS construction standards.
- Existing waste storage facilities need not meet current construction standards, but must meet standards to assure against leakage and structural failure.
- Existing facilities waste storage facilities lots must meet be closed according to current NRCS standards.

Runoff Management

To qualify for local approval, a livestock facility must comply with standards to prevent polluted runoff. A *runoff management worksheet (worksheet 5)* must accompany the application for local approval. A registered professional engineer or certified agricultural engineering practitioner must sign the *worksheet*.

- New or substantially altered animal lots must meet current NRCS construction standards.
- Existing animal lots need not meet current construction standards, but must meet basic phosphorus runoff standards.
- Feed storage must be managed to prevent significant discharge of leachate or polluted runoff. Special requirements apply to storage of high moisture feed (65% or higher moisture content).
- Runoff from a livestock facility must be diverted from contact with animal lots, manure storage facilities, feed storage areas and manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.
- A livestock facility must be designed, constructed and maintained to prevent overflow of manure storage facilities.
- A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.
- A livestock facility may not have unrestricted livestock access to waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water.
- If the construction of a new or expanded livestock facility will disturb more than one acre of land, the operator must have a construction site erosion control plan (per current DNR rules).

Mortality Management

A *mortality management worksheet (worksheet 6)* must accompany an application for local approval. The *worksheet* must describe the operator’s plan for disposing of livestock that die at the livestock facility. This rule does not regulate the method of disposal (other laws may apply).

Local Decision

A local government must grant or deny an application within 90 days after it receives a complete application. If the application complies with this rule, the local government *must approve* the application unless the local government finds, based on other clear and convincing evidence documented in the local record, that the proposed livestock facility fails to

meet the standards in this rule. The local government must issue its decision in writing. The decision must be based on written findings of fact included in the decision. The findings must be supported by evidence in the record. The local government must keep a decision-making record.

Under the Livestock Facility Siting Law, an “aggrieved person” may appeal a local decision to the state Livestock Facility Siting Review Board. The Board will review the local decision based on the local record (the Board will not hold a new hearing or collect additional evidence).

Environmental Impact

This rule will protect the environment by establishing clear environmental protection standards for new and expanded livestock facilities that require local approval. It will protect neighboring land uses by establishing reasonable odor management standards and property line setbacks. It will protect surface water and groundwater quality by incorporating existing water quality setbacks, and by establishing reasonable standards related to waste management, waste storage, nutrient management and runoff control. This proposed rule will ensure that applicants for local approval are aware of other environmental laws that may apply, even though those laws are not incorporated as standards for local approval. A complete environmental assessment is available from DATCP.

Fiscal Impact

This proposed rule will have a significant fiscal impact on DATCP and local units of government. DATCP will incur an estimated additional cost of \$155,000 annually to administer the Livestock Facility Siting Review Board and carry out other duties. Local governments that require local approval may incur a cost of \$600 to \$1,500 per approval. Local governments may charge an application fee of up to \$500 to offset costs to review and process an application. If there are 50–70 local approvals per year, aggregate local costs for all local governments may range from \$5,000 to \$70,000 annually. This cost will be offset by savings related to more orderly, less contentious, approval proceedings. A complete fiscal estimate is available from DATCP.

Business Impact

This rule will have a significant impact on livestock businesses in this state. This rule will facilitate the orderly growth and modernization of Wisconsin’s critical livestock industry by providing a clearer, more uniform, more objective and more predictable local approval process.

This rule directly affects only a small number of livestock operators – those who voluntarily choose to build new or expanded livestock facilities in jurisdictions that require local approval. The affected facilities will typically have over 500 “animal units” (some smaller facilities may be affected, in local jurisdictions that had lower permit thresholds prior to July 19, 2003).

DATCP estimates that this rule will directly affect only about 50–70 livestock facilities per year. But the rule will have a significant impact in those cases. It will also have a long-term, indirect impact on the growth and development of the state’s livestock industry as a whole. The rule will facilitate more orderly planning, more appropriate siting choices, more predictability for livestock operators and their lenders, and more efficient and environmentally sustainable industry development.

Prior to the Livestock Facility Siting Law, some individual livestock operators spent hundreds of thousands of dollars on *unsuccessful applications* for local siting approval. When local approval was denied, the operators lost income opportunities. Other operators, though ultimately successful,

incurred extraordinary (and often unnecessary) costs and delays.

Contentious local proceedings have exacted a heavy emotional toll on livestock operators and their families, and harmed community relations. The unpredictability of local approval has discouraged lending and capital investment.

New and expanding operations will need to comply with regulations spelled out in this rule. This may add costs for some new or expanding operations, but will also save costs related to local siting disputes and litigation. Operators will be able to evaluate compliance needs before applying for local approval, and will be able to plan their investments accordingly.

DATCP has developed *preliminary cost estimates* for livestock facilities directly affected by this rule. DATCP estimates the following average cost (or savings) range per siting, by livestock facility size category:

Under 500 “animal units:” (\$15,500 savings) to \$18,500

500 to 1,000 “animal units:” (\$46,150 savings) to \$48,200

Over 1,000 “animal units:” (\$163,590 savings) to \$159,000

Based on reports of livestock siting disputes prior to the Livestock Facility Siting Law, DATCP believes that the *net costs* of this rule may actually be much lower, and that savings may actually be much higher. Net costs may also be offset, in some cases, by government cost-sharing grants. An applicant for local approval is not ordinarily entitled to cost-sharing for conservation practices needed to comply with this rule. *However a political subdivision may provide cost-sharing if it wishes.*

This rule affects local approval of livestock facilities that will have 500 or more “animal units” (or that will exceed a lower threshold established by local zoning ordinance prior to July 19, 2003). Many of these operators are “small businesses” as defined in s. 227.114 (1), Stats.

This rule will have a significant economic impact on affected small businesses, and is therefore subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. That provision automatically delays a rule’s applicability to small businesses by 2 months, compared to the effective date for other businesses. A complete business impact analysis, including a small business analysis (“initial regulatory flexibility analysis”), is available from DATCP.

Federal Regulations

This proposed rule addresses local regulation of livestock facility siting. There are no federal regulations that address this topic directly. But the following federal programs have an impact on livestock facilities in this state: Federal Clean Water Act, Federal Clean Air Act, NRCS nutrient management standards, federal conservation incentives.

Regulation in Surrounding States

Among states bordering Wisconsin, there is an apparent trend toward state regulation that pre-empt or standardizes local regulation. State standards can address important concerns such as runoff control and odor management, while providing a more uniform and predictable regulatory environment for farm businesses. Illinois, Michigan and Iowa have established state frameworks for approval of new and expanded livestock facilities, while Minnesota is re-evaluating the state’s role in siting decisions.

Notice of Hearings Natural Resources (Fish, Game, etc.) [CR 05-016]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.063, 29.177 and 227.11, Stats., interpreting ss. 29.063, 29.177 and 29.361, Stats., the Department of Natural Resources will hold public hearings regarding revisions to ch. NR 10, Wis. Adm. Code, relating to deer hunting as it relates to the management of chronic wasting disease. The proposed rule includes the following proposed changes in the chronic wasting disease hunting rules:

1. Expand the Western Disease Eradication Zone (WDEZ) around new positives near Plain and Blanchardville.
2. Expand the Eastern Disease Eradication Zone (EDEZ) around new positives found near the north and east border of last year’s EDEZ.
3. Remove most of the Richland County portion of the WDEZ from the WDEZ.
4. Expand the Herd Reduction Zone (HRZ) to include all of Deer Management Unit (DMU) 76A rather than just the south half.
5. Create a 5-day split in the gun season of the DEZs so that there is no gun deer hunting the 5 days prior to the Saturday before Thanksgiving.
6. Apply either sex hunting regulations to the archery and gun seasons beginning on the Saturday before Thanksgiving through January 3 in both the DEZs and the HRZ.
7. Allow earning of buck hunting authority in any earn-a-buck unit in the state by shooting an antlerless deer in any earn-a-buck unit in the state.
8. Establish a deer hunting season for Belmont Mound State Park, which is located in the HRZ.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department’s Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the Department will have an open house/informational meeting immediately preceding each public hearing. The open house/informational meeting on the deer herd status and the proposed CWD rule will be held from 5:00 p.m. to 7:00 p.m. Department staff will be available to answer questions regarding the proposed rules and deer herd status in the surrounding deer management units.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

Monday, **March 14, 2005**, at 7:00 p.m.

Room 151, State Office Building
141 NW Barstow Street
Waukesha

Monday, **March 14, 2005**, at 7:00 p.m.
Activity Center, Jefferson County Fairgrounds
503 N. Jackson St.
Jefferson

Tuesday, **March 15, 2005** at 7:00 p.m.
Hearing Room, Kenosha Center
19600 75th Street (Hwy. 45 & 50 intersection)
Bristol

Tuesday, **March 15, 2005** at 7:00 p.m.
Basement Conference Room, Karakahl Country Inn
1405 Bus. 18-151
Mt. Horeb

Wednesday, **March 16, 2005** at 7:00 p.m.
Cafetorium, Elkhorn Middle School
627 W. Court Street (STH 11)
Elkhorn

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Since the discovery of CWD in Wisconsin's free-roaming deer herd in February 2002, the Governor, the legislature, and the Natural Resources Board have given the Department of Natural Resources the directive to control the spread of CWD from its current known location and to eradicate the disease where it exists. Additionally, an Environmental Impact Statement completed in conjunction with the 2003 CWD rules, identified adaptive management as the preferred management alternative to manage and eventually eradicate the disease from the state. This rule, which is a follow-up rule to last year's CWD rule order, contains rule changes that adapt to current scientific knowledge gathered in previous seasons and through extensive research. This rule order includes the following proposed changes in the CWD hunting rules:

- 1) Expand the Western Disease Eradication Zone (WDEZ) around new positives on the north end and the south end of the zone.
- 2) Expand the Eastern Disease Eradication Zone (EDEZ) around new positives found near the north and east border of last year's EDEZ.
- 3) Remove most of the Richland County portion of the WDEZ from the WDEZ.
- 4) Expand the Herd Reduction Zone (HRZ) to include all of Deer Management Unit (DMU) 76A rather than just the south half.

5) Create a 5 day split in the DEZ gun season so that there is no gun deer hunting the 5 days prior to the Saturday before Thanksgiving.

6) Apply either sex hunting regulations to the archery and gun seasons beginning on the Saturday before Thanksgiving through January 3 in both the DEZs and the HRZ.

7) Allow earning of buck hunting authority in any earn-a-buck unit in the state by shooting an antlerless deer in any earn-a-buck unit in the state.

8) Establish a deer hunting season for Belmont Mound State Park, which is located in the HRZ.

Since 2002, the department has promulgated rules to manage and control CWD. In previous years the department has added significant areas of southern Wisconsin to one of the designated CWD management zones, which has resulted in added costs and reduced revenues to the department. However, this year the department is seeking to add smaller areas to the eradication zone and unlike previous years is proposing to eliminate a section of the current eradication zone in Richland county. The areas added and the area removed are roughly similar in size and therefore will not result in a recognized fiscal effect.

However, there is a significant portion of land being added to Herd Reduction Zone. This area including portions of Jefferson, Dane, Waukesha and Dodge Counties is currently designated as Deer Management Unit 76A. By adding this area and including it under the HRZ designation, the sale of antlerless permits will not take place in this area in 2005, since the antlerless permits in the CWD zones are unlimited and issued without a charge to hunter. In 2004, 737 Bonus Permits were sold in the non-CWD portion of 76A. Approximately 90% of bonus permits are sold to resident hunters with the remaining 10% sold to non-residents. Bonus permits cost \$12 for residents and \$20 for non-resident deer hunters. Given these factors, assuming the same number of permits were purchased in 2005, then this would result in a loss of \$9,436 to the agricultural damage account (663 resident permits x \$12 = \$7,956 and 74 non-residents permits x \$20 = \$1,480).

The remaining proposed modifications do not result in an increase or decrease in appropriations or revenues for the department. Additionally, these proposals do not result in increased or decreased department costs.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 21, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

Notice of Hearings Natural Resources (Fish, Game, etc.)

[CR 05-015]

[CR 05-017]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1) and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 20, Wis. Adm.

Code, relating to fishing on the inland, outlying and boundary waters of Wisconsin. The changes proposed include:

1. Prohibiting the placement of setlines, set or bank poles or any part thereof prior to the opening of the setline, set or bank pole season and requires that they be removed after the season is closed.

2. Increasing the minimum length limit from no minimum to 26 inches and decreases the daily bag limit from 5 to 2 for northern pike on Bass Lake (T33N, R10W, S34), Barron County and Horseshoe Lake (T34N R14W S7), Barron and Polk Counties.

3. Restricting hook and line fishing to artificial lures only and creates a catch and release only regulation for all fish species on Inch Lake, Bayfield County.

4. Eliminating the 26–inch minimum length limit and increases the daily bag limit from 2 to 5 for northern pike on Ellison Lake, Bayfield County.

5. Reducing the daily bag limit from 25 in total to 10 in total for panfish on Lake Arbutus and connected waters, Clark and Jackson Counties.

6. Reducing the daily bag limit from 25 in total to 10 in total for panfish on Lake Menomin and Tainter Lake, Dunn County.

7. Eliminating the 32–inch minimum length limit and increases the daily bag limit from 1 to 5 for northern pike on Butternut and Franklin Lakes, Forest County.

8. Extending the open season for trout on Lake Wazee by changing the closing date from September 30 to the first Sunday in March, Jackson County.

9. Increasing the minimum length limit from 12 inches to 30 inches, decreases the daily bag limit from 5 in total to 1 in total, and shortens the open season by changing the closing date from the first Sunday in March to September 30 for trout on Big Carr and Clear (T39N R7E S16) Lakes, Oneida County.

10. Establishing a 15–inch minimum length limit and eliminates the restriction of only 1 fish longer than 14 inches allowed for walleye on Pelican Lake, Oneida County.

11. Increasing the minimum length limit from no minimum to 26 inches and decreases the daily bag limit from 5 to 2 for northern pike on Horseshoe Lake (T34N R15W S1, S12, S13, S14), Polk and Barron Counties.

12. Increasing the minimum length limit from 40 inches to 45 inches on the Chippewa river from the Chippewa flowage dam (Winter dam) downstream to and including the Radisson Flowage, Sawyer County.

13. Increasing the minimum length limit from 7 inches to 30 inches and decreases the daily bag limit from 5 in total to 1 in total for trout on Long Lake, Vilas County.

14. Eliminating the 28–inch minimum length limit and establish a restriction of 1 fish longer than 14 inches allowed, and increase the daily bag limit from 1 to 5 for walleye on Kentuck Lake, Vilas County.

15. Eliminating the catch and release only with artificial lures only season and replaces it with the Waushara County base regulation of a 7–inch minimum length limit and a 5 in total daily bag limit for trout on the Pine River upstream from the Wild Rose mill pond, Waushara County.

16. Increasing the minimum length limit from 15 inches to 18 inches and reduces the daily bag limit from 5 in total to 3 in total for walleye, sauger and hybrids on Nepco and Wauzecha Lakes, Wood County.

17. Making it illegal to hook and line fish at night (1/2 hour after sunset to 1/2 hour before sunrise) on the Little River in Oconto County from October 1st through the Friday

immediately preceding the opening of the general fishing season. If the September 15 closure starting date is adopted, the October 1 date will be changed to September 15 to make it consistent.

18. Beginning the current night fishing closure and hook gap size restrictions on September 15 rather than October 1 each year to better coincide with the runs of migratory salmonids on tributaries to Lake Michigan and Green Bay. The prohibition of hook and line fishing at night will continue to end on the first Saturday in May. In addition, these sections prohibit fishing by any methods from September 15 – December 31. Thus, on January 1, authorized fishing methods other than hook and line fishing reopen. For example, under the proposal, dip netting for suckers at night in the spring would remain open to sport fishers.

19. Providing anglers with the ability to legally possess a non–indigenous detrimental fish for the purpose of transporting it to a DNR office for identification. An angler is restricted to one specimen and it must be immediately killed.

20. Changing the open season for northern pike on small Lake Michigan tributaries north of U.S. Highway 10 from a continuous open season to the general fishing season of the first Saturday in May to the first Sunday in March to protect northern pike during the spawn. The northern pike fishing season on the East Twin River, West Twin River, Ahnapee River and Kewaunee River will remain open all year.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 23.09 (2) (b), 29.014, 29.089 (3), 29.091, 29.193 (2) and 29.889 (2), Stats., interpreting ss. 1.026 (1) (b), 23.09 (2) (b), 29.014, 29.089 (3), 29.091, 29.193 (2) and 29.889 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 12, 15 and 45, Wis. Adm. Code, relating to hunting and trapping regulations. The proposed rules:

1. Allowing landowners on private land to shoot and kill any gray wolf in the act of attacking domestic animals provided that they report the shooting to the department within 24 hours and turn the carcass in to the Department.

2. Prohibiting the tagging, collaring or marking and release of wild animals without the Department's authorization.

3. Eliminating the bear hunting "no dog zone" in bear management zone A.

4. Creating a subzone in bear management zone C where the use of dogs would be allowed.

5. Modifying the bear hunting license application deadline and updating application submission information.

6. Creating consistent standards for body–gripping type traps (conibear size restrictions).

7. Prohibiting the use of electronic turkey decoys for turkey hunting.

8. Establishing a deer hunting season at Kohler–Andrae State Park and correct a drafting error relating to the hunting season at Yellowstone State Park.

9. Allowing "Long Term" Class B disabled permit holders to participate in disabled hunts.

10. Allowing the hunting of other game species on lands open to disabled hunts.

11. Eliminating the requirement for bear hunters to declare their willingness to participate in agricultural damage and nuisance situations and modification of the application deadline.

12. Establishing a "no entry wildlife refuge" at the Turtle Valley Wildlife Area.

13. Requiring the owner to identify tree stands used on state–owned lands and lands under the management of the department.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:
SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that at 7:00 p.m. on Monday, April 11, 2005, the County Conservation Congress for each county will hold its election of delegates. Upon completion of the delegate election, the joint Spring Hearing/Conservation Congress meeting will convene to take comments on the foregoing rule modifications.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on Monday, April 11, 2005 at 7:00 p.m. at the following locations:

Adams – County Board Room, Adams County Building, 400 Main Street, Friendship

Ashland – Ashland Senior High School, Auditorium, 1900 Beaser Ave., Ashland

Barron – Barron County Courthouse, Auditorium, 330 E. LaSalle Ave., Barron

Bayfield – Drummond High School, 40 Eastern Ave., Drummond

Brown – Franklin Middle School, Auditorium, 1234 W. Mason Street, Green Bay

Buffalo – Alma High School Auditorium, S1618 STH 35, Alma

Burnett – Burnett Co. Government Center, Room 165, 7410 County K, Siren

Calumet – Calumet County Courthouse, Room 25, 206 Court St., Chilton

Chippewa – Chippewa Falls Middle School, Auditorium A, 750 Tropicana Blvd., Chippewa Falls

Clark – Greenwood High School, Cafetorium, 306 W. Central Ave., Greenwood

Columbia – Columbia County Courthouse, 400 Dewitt St., Portage

Crawford – Crawford County Courthouse, Courtroom, 220 N. Beaumont, Prairie du Chien

Dane – Alliant Energy Center, 1919 Alliant Energy Way, Madison

Dodge – Horicon City Hall, 404 E. Lake Street, Horicon

Door – Door County Court House, A 150, 421 Nebraska Street, Sturgeon Bay

Douglas – Solon Springs High School, 8993 E. Balwin Ave., Solon Springs

Dunn – Dunn County Fish and Game Club, 1900 Pine Ave., Menomonie

Eau Claire – South Middle School, Auditorium, 2115 Mitscher Ave., Eau Claire

Florence – Florence Natural Resource Center, Large Conference Room, Highway 101/70, Florence

Fond du Lac – Theisen Jr. High School, Auditorium, 525 E. Pioneer Rd., Fond du Lac

Forest – Crandon High School, Auditorium, 9750 USH 8 W, Crandon

Grant – Grant Co. Youth and Ag Building, Grant Co. Fairgrounds, 916 East Elm Street, Lancaster

Green – Monroe Middle School, Auditorium, 1510 13th Street, Monroe

Green Lake – Green Lake High School, Small Gym, 612 Mill Street, Green Lake

Iowa – Dodgeville High School, Gymnasium, 912 West Chapel Street, Dodgeville

Iron – Iron County Court House, Main Courtroom, 300 Taconite, Hurley

Jackson – Black River Falls Middle School, LGI Room, 1202 Pierce Street, Black River Falls

Jefferson – Jefferson County Fair Park, Activity Center, 503 N. Jackson, Jefferson

Juneau – Old Courthouse Building, Room # 200, 220 East State St., Mauston

Kenosha – Bristol Grade School, 20121 83rd Street, Bristol

Kewaunee – Kewaunee County Courthouse, Court Room, 613 Dodge Street, Kewaunee

LaCrosse – LaCrosse County, Auditorium, Onalaska High School, 700 Wilson Street, Onalaska

Lafayette – Darlington High School, Cafeteria, 11838 Center Hill Road, Darlington

Langlade – Langlade County Multi-purpose Building, 1581 Neva Rd., Antigo

Lincoln – Tomahawk Elementary School, Auditorium, 1048 E. Kings Rd., Tomahawk

Manitowoc – UW-Manitowoc, Theater, 705 Viebahn Street, Manitowoc

Marathon – John Muir Middle School, Auditorium, 1400 West Stewart Ave., Wausau

Marinette – Crivitz High School, Auditorium, 718 Hall Hay St., Crivitz

Marquette – Montello High School, Community Room, 222 Forest Ln., Montello

Menominee – Menominee County Courthouse, Basement, Courthouse Lane, Keshena

Milwaukee – Greenfield High School, Auditorium, 4800 S. 60th Street, Greenfield

Monroe – Tomah High School, 901 Lincoln Ave., Tomah

Oconto – Suring High School, Cafeteria, 411 E. Algoma Street, Suring

Oneida – James Williams Junior High, Auditorium, 915 Aracia, Rhinelander

Outagamie – Riverview Middle School, Auditorium, 101 Oak Street, Kaukauna

Ozaukee – Webster Middle School, Cafeteria, W75 N624 Wauwatosa Rd., Cedarburg

Pepin – Pepin Co. Government Center–Co., Board Room, 740 7th Ave. W, Durand

Pierce – Ellsworth Senior High School, Auditorium, 323 Hillcrest, Ellsworth

Polk – Unity High School, Gymnasium, 1908 150th St./Hwy. 46, Balsam Lake

Portage – Ben Franklin Jr. High School, Auditorium, 2000 Polk St., Stevens Point

Price – Courthouse, 126 Cherry Street, Phillips

Racine – Union Grove High School, Auditorium, 3433 S. Colony Ave., Union Grove

Richland – Richland Co. Courthouse, Courtroom, 181 West Seminary Street, Richland Center

Rock – Loyal Order of Moose Lodge, 2701 Rockport Road, Janesville

Rusk – Ladysmith High School, Cafeteria, 1700 Edgewood Ave. East, Ladysmith

Sauk – Robert G. Brown Theatre – UW Baraboo Campus, 1006 Connie Road, Baraboo

Sawyer – Hayward High School, Auditorium, 10320 Greenwood Lane, Hayward

Shawano – Shawano Community Middle School, LG 1, 1050 S. Union St, Shawano

Sheboygan – Sheboygan Falls High School, Auditorium, 220 Amherst Ave. Sheboygan Falls

St Croix – Indianhead Tech. College, Cashman Auditorium, 1019 S. Knowles Ave., New Richmond

Taylor – Taylor County Multi–purpose Building, Intersection of Hwy 64&13, Medford

Trempealeau – Whitehall City Center, Gymnasium, 36245 Park Street, Whitehall

Vernon – Viroqua Middle School, Blackhawk Drive, Viroqua

Vilas – Sayner Community Center, Golf Course Road, Sayner

Walworth – Delavan/Darien High School, 150 Cummings, Delavan

Washburn – WI Ag Research Station, Conference Room, W6646 Hwy 70, Spooner

Washington – Washington Co. Fair Park, Exhibit Hall, 3000 Hwy PV, West Bend

Waukesha – Waukesha County Expo, Arena, 1000 Northview Road, Waukesha

Waupaca – Waupaca High School, Auditorium, E2325 King Road, Waupaca

Waushara – Waushara County Courthouse, Court Room, 2nd Floor, 209 S. St. Marie Street, Wautoma

Winnebago – Webster Stanley Middle School, Auditorium, 915 Hazel St., Oshkosh

Wood – Pittsville High School, Auditorium, 5459 Elementary Avenue, Pittsville

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call AnnMarie Kutzke at (608) 266–2952 with specific information on your request by April 1, 2005.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed fishing regulations may be submitted via U.S. Mail to Mr. Steve Hewett, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed hunting and trapping regulations may be submitted via U.S. Mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked no later than April 12, 2005. Written comments whether submitted electronically or by U.S. mail will NOT, however, be counted as spring hearing votes.

Fiscal Estimate

The objective of these rule changes is to offer deer, bear and disabled hunters more hunting opportunities and to simplify application procedures and regulatory requirements. In addition, these rules include provisions to effectively manage wildlife populations and to assure that hunters and trappers are offered a quality hunting experience.

Of the proposed rule changes, that would appear on the 2005 Spring Hearing questionnaire the following will have a fiscal impact:

- Allowing landowners on private land to shoot and kill any gray wolf or cougar in the act of attacking domestic animals provided that they report the shooting to the Department within 24 hours and turn the carcass in to the Department.

- Creating a subzone in zone C where the use of dogs would be allowed.

- Establishing a deer hunting season at Kohler–Andrae State Park and correct a drafting error relating to the hunting season at Yellowstone State Park.

- Allowing "Long Term" Class B disabled permit holders to participate in disabled hunts.

- Allowing landowners to hunt on lands open to disabled hunts.

- Requiring the owner to identify tree stands used on state owned lands.

A. Reduce Costs:

From July 2003 – June 2004, there were thirty–one cases of wolf depredation on domestic animals. USDA–Wildlife Services conducted trapping and all but one of the wolves were euthanized. Additionally, USDA–Wildlife Services provided flashing lights. Costs for these abatement measures were shared by the state and the USDA. However, damage claim payments rest exclusively with the state. Wolf damage payments during FY '04 were \$ 67,715.43. Although there is potential for a reduction in costs once landowners are allowed to kill wolves in the act of attacking a domestic animal, the reduction in state costs will be minimal, likely less than 10%. If we assume an 8% reduction in claims it may result in a savings of ~ \$5,400.

Requiring tree stands to be identified on department owned and managed lands will likely reduce the number of stands illegally left on these properties and will make it easier for wardens to identify those individuals violating various hunting related regulations. This rule change has the potential

to reduce the amount of time wardens spend investigating complaints about illegally placed stands and violations of hunting laws on department owned and managed lands. Although time will likely be saved, warden time would be reallocated to enforcing other regulations and tasks. So no appreciable cost reductions will be realized.

B. Increase Costs:

Creating a subzone in bear management zone C where the use of dogs would be allowed, will likely create a number of complaints about dogs running at large in a part of the state where dogs pursuing bears is uncommon. However, dogs may currently be used to pursue coyotes, raccoons and train bear dogs in this part of the state. The area affected encompasses 4 counties. However, since there are other hunting seasons open concurrent with the bear hunting season, and the bear hunting season is already open in this part of the state, the costs to Law Enforcement should be absorbed into local budgets and work time.

Establishing a deer hunting season at Kohler–Andrae State Park. Costs include signage at the property (one time cost ~\$500), annual permit issuance and informational materials will be incorporated into Customer Service and Licensing and Wildlife budgets. Patrolling of the property by Park staff during the season will result in additional costs to the local Park staff in terms of staff time.

One additional conservation warden will be needed to be on staff during this hunt (LTE). Additional hours would be at a minimum 140 hours if the LTE worked 17.5 days of the season with permanent staff working the other 17.5 days. Hours will also be needed to work on dual boundary posting adjacent to private property. The park facility repair worker and other staff can accomplish this in a minimum of 50 hours.

LTE officer = \$1330.00 (wage)

FTE officer = \$2590.00 (wage)

FTE staff = \$846.00 (wage) – time spent on boundary work – One time cost

Materials = \$500.00 (signs/posts for boundaries) – One time cost.

Estimated annual expenditures (staff time) – \$3,920

Mileage and equipment (including sign maintenance) – \$500

Signage at Turtle Valley will also result in a one time cost of approximately \$500.

Allowing "Long Term" Class B disabled permit holders to participate in disabled hunts and allowing landowners to hunt on lands open to disabled hunts will likely increase the number of properties open to disabled hunts and the number of participants. This will have the potential to increase administrative costs associated with the implementation of these disabled hunts. However, again, these costs will be absorbed by central office and regional staff into their daily work activities.

A personal copy of the proposed rules and fiscal estimates may be obtained from Ms. AnnMarie Kutzke, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266–2952.

Notice of Hearings

Natural Resources

(Environmental Protection—Air Pollution Control)

[CR 05–018]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and 285.59 (5) (a) and (6), Stats., interpreting s. 285.59, Stats., the Department of Natural

Resources will hold a public hearing on revisions to ch. NR 488, Wis. Adm. Code, relating to revising regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere. The proposed rule revised ch. NR 488 as follows:

1. *Adding substitute refrigerants.* The proposed rule will apply the ch. NR 488 requirements to salvaging and transporting equipment containing substitutes for ozone depleting substances, namely HFC (hydrofluorocarbon) and PFC (perfluorocarbon) refrigerants. HFC refrigerants have been utilized in nearly all vehicle air-conditioners manufactured since 1995 and are increasingly found in appliances, vending machines and residential and commercial air conditioning and refrigeration systems being retired. PFC refrigerants have only seen very limited use in specialized refrigeration systems. Adding HFC and PFC refrigerants to ch. NR 488 will mean those who recover these refrigerants during salvage will have to register with the Department, use approved recovery equipment, continue to have at least one person on their staff who holds the appropriate certification to operate the equipment, and keep records of their recovery activities. They will also have to supply documentation that these refrigerants have been recovered from any equipment they deliver to a scrap metal processor, a procedure already in effect in this industry in response to the federal release ban. The requirements for equipment operator certification are the same as they have been previously required.

2. *Modifying record keeping requirements.* First, those who recover refrigerants from salvaged equipment will be required to keep more specific records of processed items to allow better tracking and enforcement of regulated activities. Second, anyone who sells, gives or transports salvaged refrigeration equipment to a scrap processor must now supply a document to the scrap processor assuring that all remaining refrigerants have been recovered from the items they deliver. The proposed rule requires that anyone who provides this document to a scrap processor retain a copy of it themselves for three years. The scrap processor is already required to retain the document for three years.

3. *Operator qualifications.* The Department proposes to clarify and update the qualifications for individuals recovery from "stationary" equipment during salvage.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Small businesses who recover refrigerants from refrigeration and air conditioning equipment that is to be salvaged or dismantled, typically vehicle and appliance salvagers, appliance retailers and HVAC contractors who are replacing air conditioning equipment or preparing buildings for demolition. Approximately 400 such businesses will be affected. The rule also affects small businesses that haul refrigerated appliances to be salvaged, typically waste haulers, recycling facilities and appliance stores and salvagers. Approximately 70 such businesses will be affected.

b. Description of reporting and bookkeeping procedures required: The proposed rule change does create some additional record keeping requirements, but no additional reporting requirements. Those who recover refrigerants from salvaged refrigeration and air conditioning equipment are required to keep more detailed records of the equipment they process than under previous rule language. These same parties will also be required to keep a copy of the document they provide to a scrap processor stating that all refrigerants will be removed from any equipment they deliver for scrap.

Previous rule language did not require that those providing this documentation to scrap processors must keep a copy for themselves. Adding the HFC and PFC refrigerants will not require additional recovery work by these parties, since recovery of these refrigerants has been required under federal law since 1995. Those who recover refrigerants during salvage and those who transport appliances to be salvaged must register annually with the Department, as has been required since the program began in 1993.

c. Description of professional skills required: The proposed rule change does not create an additional need for professional skills, since the qualifications for operators of refrigerant recovery equipment have not changed.

The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

Tuesday, **March 22, 2005** at 10:00 a.m.

Video conference participation will be available at:

Room 139, State Office Building
718 W. Clairemont Avenue
Eau Claire

Room 618, State Office Building
200 N. Jefferson St.
Green Bay

Room 8F, State Office Building
101 E. Wilson Street
Madison

Room 98, State Office Building
819 N. 6th Street
Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please

call Robert Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

1. The Department's existing Refrigerant Recovery Program oversees ch. NR 488, Refrigerant Recovery from Salvaged or Dismantled Refrigeration Equipment. The rule changes include adding new refrigerants including HFC (hydrofluorocarbon) and PFC (perfluorocarbon) refrigerants. In 1995, the state legislature granted DNR (and the other state agencies) authority to apply regulatory coverage to any refrigerants that are used as substitutes for ozone-depleting refrigerants (see s. 285.59 (6), Wis. Stats.). The Department would be able to absorb the additional work to regulate these additional pollutants as part of work done by the existing program. These appropriations provide for the equivalent of two full-time-equivalent (FTE) Air Management staff used to administer the NR 488 program elements statewide: facility registration, compliance assurance, enforcement, education and administrative support. The work is actually performed by several staff in Department offices throughout the state.

2. A very small number of local governments including villages, cities, counties and school districts are affected directly by this regulation, since these local governments chose to transport appliances for salvage or recover refrigerants from appliances or from fleet vehicles that they own. Currently, local governments are 17% of the total safe transporter registrants and 1% of the total salvager registrants. One state health care institute and one UW campus are registered as a salvager and transporter, respectively. There will be a small increase in costs incurred by registered salvagers from keeping additional records for processed equipment. A larger number of local governments will potentially see slight increased costs passed on to them by their appliance salvage contractors.

3. Many of the regulated parties are small businesses, including vehicle and appliance salvagers, scrap metal processors, HVAC businesses that retire refrigeration and AC systems, waste haulers and others who collect discarded refrigerated appliances and demolition contractors. These small businesses will see some small cost increase as a result of increased record keeping required for compliance. Regulation changes will not require any new or additional small businesses to enter this program. The addition of other refrigerants (HFCs and PFCs) will not add any increase in costs for their recovery, since these refrigerants must already be recovered for federal requirements (40 CFR 82.154).

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Mr. Lance Green, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 8, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Green.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Commerce

(CR 04–108)

Chapter Comm 129, relating to technology commercialization programs.

Natural Resources

(CR 04–061)

Chapter NR 809, relating to reporting of analytical data to the department and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite, or combined nitrate and nitrite standards.

Natural Resources

(CR 04–101)

Chapters NR 106, 149 and 219, relating to whole effluent toxicity (WET) test methods.

Natural Resources

(CR 04–111)

Chapter NR 20, relating to trout fishing in Richland and Vernon counties.

Transportation

(CR 04–141)

Chapter Trans 102, relating to military vehicle operator CDL exemption.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection (CR 04-094)

An order affecting ch. ATCP 30, relating to pesticide product restrictions.
Effective 4-1-05.

Financial Institutions—Banking (CR 04-098)

An order affecting ch. DFI-Bkg 74, relating to authorizations to consolidate accounts.
Effective 4-1-05.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the February 28, 2005, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Justice (CR 04-028)

An order creating ch. Jus 16, relating to enforcement of the Tobacco Master Settlement Agreement. Effective 3-1-05.

Summary of Final Regulatory Flexibility Analysis

There may be an effect on small businesses. Currently, there is no Wisconsin manufacturer that would be affected by the proposed rules. Under statutory law, non-participating manufacturers (none of which are currently located in Wisconsin) are required to escrow money for possible future litigation concerning the state's health costs related to smoking. The rule gives the Department of Justice the power to require these non-participating manufacturers to provide certifications and escrow payments quarterly. While the Department of Justice believes that quarterly payment will assist non-participating manufacturers to make appropriate marketing decisions so that they can meet these financial obligations, the quarterly reporting will require more paperwork for them.

Summary of Comments by Legislative Review Committees

No comments were received.

Transportation (CR 04-057)

An order affecting chs. Trans 201 and 202, relating to the Wisconsin scenic byways program. Effective 3-1-05.

Summary of Final Regulatory Flexibility Analysis

The provisions of this proposed rule creating a process for the designation of state trunk highways as scenic byways have no direct affect on small businesses. It is expected that designation of a highway segment as a scenic byway will increase tourism to the area which may have an indirect positive effect on local small businesses especially those that provide goods and services to tourists such as restaurants, hotels and motels, gift shops and similar businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **February 2005**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Justice

Ch. Jus 16 (entire chapter)

Transportation

Ch. Trans 201

S. Trans 201.01

S. Trans 201.23

Ch. Trans 202 (entire chapter)

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

Transportation

Ch. Trans 201

S. Trans 201.07 (3) (g)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 87.03 (7m)	Comm 81.03 (182) and (194)	Comm 81.01 (182) and (194)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 87. Relating to the creation of the State Interoperability Executive Council (SIEC).

Executive Order 88. Relating to the recreation of the Governor's Council on Workforce Investment.

Executive Order 89. Relating to smoke-free state office buildings.

Executive Order 90. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Lance corporal Travis Wichlacz of the United States Marine Corps Reserve who lost his life during operation Iraqi Freedom.

Public notices

Department of Agriculture, Trade and Consumer Protection

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. s. 779.41 (1), mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under Wis. Stat. s. 779.41, has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under Wis. Stat. s. 779.41 (1m), the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stats. ss. 779.41 (1), (1) (a), (1) (b), and (1) (c) shall be increased by 2.3%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under Wis. Stat. s. 779.41 (1), mechanic's liens generally, \$1,790.

Under Wis. Stat. s. 779.41 (1) (a), mechanic's liens on a trailer or semi-trailer designed for use with a road tractor, \$5,370.

Under Wis. Stat. s. 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$8,950.

Under Wis. Stat. s. 779.41 (1) (c) 1. to 4., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, \$3,580.
2. 20,000 pounds or more, but less than 40,000 pounds, \$7,070.
3. 40,000 pounds or more, but less than 60,000 pounds, \$10,745.
4. 60,000 pounds or more, \$13,900.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2005 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

Paul Dingee, Section Chief

Trade Practices Bureau

Department of Agriculture, Trade and Consumer Protection 2811 Agriculture Drive

P.O. Box 8911

Madison, WI 53708-8911

Telephone: (608) 224-4925

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